

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Lamesa and Tahoka, Texas))

MM Docket No. 94-_____

RM - _____

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

RECEIVED

APR 4 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETITION FOR RULEMAKING

100.3 Radio, Inc. ("100.3 Radio"), licensee of KIOL(FM), Channel 262C1, Lamesa, Texas and West Texas Broadcasting Co., Inc. ("West Texas"), licensee of KMMX(FM), Channel 284C1, Lamesa, Texas, hereby jointly petition the Commission to issue a notice of proposed rulemaking proposing the following changes in Section 73.202(b) of the Commission's Rules:

Community**Channel No.****Present****Proposed**

Lamesa, TX
Tahoka, TX

262C1, 284C1
237A

284C1
237A, 262C1

In support whereof, the following is shown:

- As expressed in the Agreement attached hereto as Exhibit A, 100.3 Radio's commitment to support and accept the reallocation of its licensed frequency to Tahoka is

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List A B C D E

143

MMB

contingent upon West Texas' performance of its obligations under the Agreement, and upon the FCC granting the assignment to 100.3 Radio of West Texas' license for operation on Channel 284C1 at Lamesa, assignment of the call sign KIOR for use on Channel 284C1 at Lamesa, 100.3 Radio's receiving a license authorization from the FCC covering operation on Channel 284C1 at the KIOR Current Site, and these FCC grants becoming final. (Exhibit A, paragraph 1(a)). In addition, 100.3 Radio has reserved rights to terminate its participation in the Agreement under certain circumstances. See, e.g., Exhibit A, paragraph 10. Thus, action on this petition and the related applications must be coordinated between the Allocations Branch and the FM Branch of the Audio Services Division in order to ensure satisfactory resolution of these contingencies, without which the consent of 100.3 Radio to the reallocation of its licensed channel would be nullified. If and when all of the steps described in Exhibit A have been approved by the Commission, 100.3 Radio will become the licensee of KIOR on Channel 284C1 at Lamesa and West Texas will become the licensee of KMMX on Channel 262C1 at Tahoka.¹

2. West Texas acquired its Channel 284 license for KMMX pursuant to Commission consent granted in File No. BAPH-871214GI on March 25, 1988. On that date, the Commission also issued West Texas Special Temporary Authority ("STA") to operate on at a transmitter site located north of Lamesa, pending action on construction permit

¹ Pursuant to the Agreement attached hereto as Exhibit A, after Channel 262C1 is allocated to Tahoka, as proposed herein, 100.3 Radio will assign its Channel 262C1 license to West Texas, and West Texas will assign its Channel 284C1 license to 100.3 Radio. Applications requesting Commission consent to these license assignments are being filed simultaneously herewith, but the Commission has been requested to withhold action on them until completion of the rulemaking proceedings proposed herein.

application File No. BPH-871214IE. Similarly, 100.3 Radio's predecessor in interest acquired its Channel 262 license for KIOL pursuant to Commission consent granted in File No. BALH-871214GH, granted on March 25, 1988, on which date it was also issued on STA authorizing operation at a site south of Lamesa, pending action on construction permit application File No. BPH-871214ID. A letter from the Chief of the Commission's Audio Services Division dated March 25, 1988, approving the actions described in this paragraph is attached hereto as Exhibit B.

3. 100.3 Radio and West Texas have been operating KIOL and KMMX with the facilities specified in the above-referenced STA's since 1988. However, their applications for construction permits for those facilities have never been granted. The site north of Lamesa from which West Texas now operates KMMX, is short-spaced to the allocation of Channel 282C2 to Brownfield, Texas made in MM Docket No. 87-603, 3 FCC Rcd 6158 (1988). See letter from the Chief of the Audio Services Division date December 1, 1993, attached hereto as Exhibit C. The Brownfield allocation was authorized to permit Station KLZK(FM) to upgrade service from Channel 280A. Id. However, service from Channel 282C2 facilities can not be implemented while West Texas operates on Channel 284C1 at the tower north of Lamesa pursuant to the STA. Id. As indicated above, implementation of the steps described in Exhibit A would solve the existing conflict between KMMX and KLZK by relocating the Channel 284C1 operation to KIOL's existing site south of Lamesa. Joint Petitioners submit that resolution of the KMMX-KLZK conflict in the manner set forth in Exhibit A and summarized herein would clearly serve the public interest by permitting

KLZK to begin operations on Channel 282C2 as envisioned by the Commission when it adopted the Report and Order in MM Docket No. 87-603, 3 FCC Rcd 6158 (1988).

4. Moreover, the requested change in city of license for Channel 262C1 would also meet the requirements of Section 1.420(i) of the Commission's Rules. See Modification of FM License ("Change of Community"), 4 FCC Rcd 4870 (1989); recon. granted in part, 5 FCC Rcd 7091 (1990). The removal of Channel 262C1 from Lamesa would leave that community with two stations, KIOI on Channel 284C1, and full-time AM Station KPET. The addition of Channel 262C1 to Tahoka would provide that community with its second authorized local service.² Tahoka is the seat of Lynn County and has a population of 3,262, according to the 1990 Census. Neither community is located within an urbanized area or a Census designated Metropolitan Statistical area. Finally, the proposed change in city of license will not result in KMMX providing a service to Lubbock, Texas, for the first time. KMMX already provides predicted city grade service to Lubbock from the Channel 284C1 facilities it has used since 1988 under the STA, and it also provided city grade service to Lubbock with the Channel 262C1 facilities it was licensed to use prior to 1988. See Exhibit C.

5. Finally, as demonstrated by the Engineering Report attached hereto as Exhibit D, Channel 262C1 can be allotted to Tahoka, Texas, at the geographic coordinates described therein in full compliance with the mileage separations to other stations and allotments set

² Channel 237A was allocated to Tahoka in MM Docket No. 84-231 and a construction permit was issued for Station KZUB in January, 1991. However, the permit was modified in May of 1993 (File NO. BPH-930204JB, granted May 12, 1993), and the Commission's records indicate that no license application has been filed. Thus, activation of KMMX on Channel 262 under the proposals described herein may bring a first local service to Tahoka.

forth in the Commission's rules, and a Channel 262C1 station located at the specified coordinates will provide a city grade service to Tahoka.

6. Accordingly, 100.3 Radio and West Texas jointly submit that the change in Channel allotments requested herein would serve the public interest, as mandated by Section 307(b) of the Communications Act, by permitting the inauguration of a wide area FM service at Brownfield, Texas, and by bringing a first competitive radio service to Tahoka, Texas. For these reasons, the Commission is respectfully requested to issue a notice of proposed rulemaking proposing the changes in 47 C.F.R. §73.202(b) described above.

Respectfully submitted,

100.3 RADIO INC.

By: 

James P. Riley
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

Its Attorney

WEST TEXAS BROADCASTING
CO. INC.

By: 

Lawrence J. Bernard, Jr.
2000 L Street, N.W., Suite 504
Washington, D.C. 20036
(202) 296-9005

Its Attorney

April
~~March~~ 14, 1994

EXHIBIT A

AGREEMENT

This Agreement is made this 31st day of December, 1993 by and between West Texas Broadcasting Co., Inc. ("West Texas"), 100.3 Radio Inc. ("100.3 Radio") and Southwestern Broadcasting Corporation ("Southwestern").

RECITALS:

1. West Texas holds a license issued by the Federal Communications Commission ("FCC") authorizing the operation of FM Radio Station KMMX, Lamesa, Texas, on the frequency 104.7 Mhz, Channel 284C1. Pursuant to Special Temporary Authority issued by the FCC ("KMMX STA"), West Texas operates KMMX with facilities located at a site (the "KMMX Current Site"), different from that described in its outstanding FCC license.

2. 100.3 Radio holds a license issued by the FCC authorizing the operation of FM Radio Station KIOL-FM ("KIOL"), Lamesa, Texas, on the frequency 100.3 Mhz, Channel 262C1. Pursuant to Special Temporary Authority issued by the FCC (the "KIOL STA"), 100.3 Radio operates KIOL with facilities located at a site (the "KIOL Current Site"), different from that described in its outstanding FCC license.

3. Southwestern has been authorized by the FCC to change the operation of FM Radio Station KLCU, Brownfield, Texas, from 103.9 MHz, Channel 280A, to 104.3 MHz, Channel 282C2, but has been unable to obtain from the FCC an authorization to construct facilities on Channel 282C2 because operation of KLCU on that channel at Brownfield would cause electrical interference to the operation of

KMMX as authorized under the KMMX STA.

4. On December 14, 1987 West Texas and 100.3 Radio's predecessor filed applications for construction permits to obtain regular authority consistent with the KMMX STA and the KIOI STA. Those applications are the objects of an FCC letter (the "Letter Order") dated December 1, 1993, which has not become a final order. 100.3 Radio's operation of KIOI on Channel 262C1 at the KIOI Current Site, as specified in its December 14, 1987 application (BPH-871214ID), is consistent with all FCC rules concerning minimum separations (§73.207), principal community coverage (§73.315) and studio location (§73.1125), and there is no valid basis under FCC rules and policies for dismissal or denial of 100.3 Radio's construction permit application.

5. In order to permit Southwestern to construct new facilities for KLCU on Channel 282C2 and to enhance the coverage by KMMX of its market area, West Texas desires to: (a) change KMMX's community of license from Lamesa, Texas to Tahoka, Texas; (b) change KMMX's operating frequency from Channel 284C1 to Channel 262C1; and (c) construct new transmitting facilities for KMMX at geographic coordinates 33° 23' 00" NL and 101° 43' 00" WL. Such changes in KMMX's operations cannot be made unless 100.3 Radio changes the operating frequency of KIOI from Channel 262C1 to Channel 284C1, and, subject to the terms and conditions set forth herein, 100.3 Radio has agreed to this change in operating frequency.

6. The changes described in paragraph 5 of this section can

only be made pursuant to FCC approval.

PROVISIONS:

In consideration of the mutual promises hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, West Texas, 100.3 Radio and Southwestern hereby agree as follows:

1. Petition for Rulemaking, Application for Construction Permit.

(a) Within ten (10) days of the execution of this Agreement, but only if the escrow deposit required by paragraph 8.a. of this Section has been made, West Texas will file a petition for rulemaking (the "Petition") with the FCC requesting that the Table of FM Allotments set forth in Section 73.202(b) of the Rules and Regulations of the FCC, 47 C.F.R. §73.202(b), be amended by deleting Channel 262C1 from Lamesa, Texas and allotting that channel to Tahoka, Texas at geographic coordinates 33° 23' 00" NL and 101° 43' 00" WL (the "KMMX New Site"). Said Petition shall recite the contingent consent of 100.3 Radio to the proposed change in the allotment community of Channel 262C1 in the Table of FM allotments, which contingent consent is hereby granted by 100.3 Radio, and this Agreement will be attached to the Petition as an exhibit. 100.3 Radio's consent to the proposed change is contingent upon West Texas's performance of its obligations under this Agreement, and upon the FCC granting the assignment to 100.3 Radio of West Texas's license for operation on Channel 284C1 at

Lamesa, assignment of the call sign KIOI for use on Channel 284C1 at Lamesa, 100.3 Radio's receiving a license authorization from the FCC covering operation on 284C1 at the KIOI Current Site, and these FCC grants becoming final.

(b) Within ten (10) days of the release of an order by the FCC allotting Channel 262C1 to Tahoka, Texas, West Texas shall prepare an application on FCC Form 301 requesting a construction permit to change the facilities of KIOI by moving its transmitter to the New KMMX Site near Tahoka, Texas, and said application shall be promptly executed and filed with the FCC by 100.3 Radio, which shall, however, continue to reserve its rights pursuant to paragraph 10 hereof.

2. Application for Assignment of License. Within ten (10) days of the execution of this Agreement, but only if the escrow deposit required by par. 8. a. of this section has been made, West Texas and 100.3 Radio will file two applications with the FCC on FCC Form 314 requesting consent to assign (1) the KMMX license for Channel 284C1 to 100.3 Radio, and (2) the KIOI license for Channel 262C1 to West Texas (the "Applications"). The licenses being assigned shall specify the sites for which Channels 262C1 and 284C1 were licensed on March 18, 1988 and February 16, 1984, respectively. West Texas and 100.3 Radio shall request the FCC to withhold action on said applications until favorable action has been taken on the Petition.

3. Requests for Changes in Call Signs. Within ten (10) days following the grant of the Applications, West Texas shall prepare

and file a request with the FCC to change the call sign KMMX to KIOI. 100.3 Radio shall prepare and concurrently file an application with the FCC to change the call KIOI to KMMX, said call sign changes to be effective upon grant of the Applications.

4. Construction of Channel 262C1 Facilities at Tahoka. Within ten (10) days after grant by the FCC of the application for construction permit described in paragraph 1 of this Section, West Texas will begin construction of the facilities described in such application and will complete construction within sixty (60) days.

5. Assignment of Licenses; Installation of Channel 284 Equipment at KIOI. Upon completion of the construction of the Channel 262C1 facilities at Tahoka and grant by the FCC of the Applications, West Texas will provide 100.3 Radio with written notice of the date on which the KMMX license for Channel 284C1 will be assigned to 100.3 Radio and the KIOI license and construction permit for Channel 262C1 will be assigned to West Texas (the "Notice"). On the date specified in the notice, which shall be at least twenty-eight (28) days, but no more than thirty-five (35) days after the date of the Notice, West Texas shall: (a) transfer to 100.3 Radio the ten (10) bay Channel 284 Shively Model 68-10 FM antenna purchased new in or about 1988 and currently installed on KMMX's antenna tower; (b) cause said antenna to be installed on KIOI's antenna tower; (c) make such other modifications to KIOI's facilities as may be necessary to permit the commencement of operations on Channel 284C1 in accordance with West Texas' existing FCC license for KMMX; and (d) assign the KMMX Channel 284C1 license

to 100.3 Radio. All costs of installing the Channel 284C1 antenna at KIOI's site, retuning the transmitter to 104.7 MHz, optimization of the antenna and testing of the modified facility for reliability following the completion of all work shall be borne by West Texas. The antenna to be supplied is to become the property of KIOI without liens or encumbrances, and must be of equivalent brand of manufacture (i.e., either identical to or of the same quality according to general industry standards), and no older than the antenna now in use by KIOI. West Texas shall schedule the work and the work crews so that work commences at the KIOI site on a Saturday morning, and so that the equipment, including but not limited to the antenna, necessary for KIOI to broadcast on Channel 284C1 is present at the KIOI site on the Saturday morning of work commencement before the Channel 262 antenna is removed from the KIOI tower. Immediately upon the removal of the Channel 262 antenna from the KIOI tower the installation of the Channel 284 antenna and any other equipment necessary for the operation of KIOI on Channel 284C1 shall commence. It is the intention of the schedule specified in the preceding two sentences that the broadcast outage of KIOI for purposes of the channel switch is to be minimized; all steps related to scheduling of the work and the work crews which will lead to minimization of KIOI's broadcast outage time are to be taken even if not explicitly specified in this paragraph.

On the same date, 100.3 shall transfer ownership of the ten (10) bay Channel 262 Shively Model 68-10 FM antenna currently installed on KIOU's antenna tower to West Texas and assign the KIOU Channel 262C1 license to West Texas. All costs associated with both transfers, including but not limited to all the costs mentioned above, charges for transportation, rigging, and any and all other costs associated with the switching of frequencies and antennas shall be borne by West Texas.

6. Preparation of Documents. Payment of Costs. West Texas shall be solely responsible for the preparation, filing and prosecution of the Petition, the application for construction permit on FCC Form 301, the Applications and the call sign change requests and shall pay all the costs associated therewith, including fees payable to the FCC and legal and engineering counsel to be selected by West Texas, but excluding any fees charged by legal or engineering counsel retained by 100.3 Radio. West Texas shall also pay all costs of installing and adjusting the Channel 284 antenna on the KIOU antenna tower as described in paragraph 5 of this section in a manner that will provide optimum coverage, making such changes in the KIOU transmitter as may be necessary to begin operation on Channel 284 and testing the installation for reliability following completion of all work, including payment for all labor, material and transportation which may be required.

7. Advertising of KIOU's Frequency Change. 100.3 Radio desires to advertise the change of KIOU's frequency in newspapers, on billboards and on television stations and wishes to acquire such

advertising on a barter basis, i.e., by offering the owners of these advertising media radio announcements in return for advertisements promoting KIOI in their media whenever possible. In order to assist 100.3 Radio in obtaining such advertising, West Texas agrees that it will provide 100.3 Radio with spot announcements to be broadcast over KMMX on the following terms and conditions:

a. The total value of spot announcements to be broadcast by KMMX shall equal Twelve Thousand Seven Hundred Dollars (\$12,700), computed in accordance with the advertising rates generally applicable to other KMMX advertisers.

b. West Texas shall not be obligated to broadcast more than two minutes of such spot announcements in any hour, and no such announcement shall be longer than one minute. Subject to these limits, spot announcements provided to 100.3 Radio under this Agreement will be accorded scheduling and placement treatment equivalent to that given KMMX's most favored advertisers.

c. West Texas' obligation to broadcast such spot announcements will cease one year after the date on which KMMX begins operating on Channel 262 if within that year KMMX has broadcast all such spot announcements ordered from it pursuant to this Agreement.

d. All such announcements shall conform to standards of acceptability used by KMMX in accepting or rejecting advertising submitted by other KMMX advertisers and KMMX shall

not be obligated to broadcast any announcement promoting KIOI or any other radio station.

e. In addition, in order to cover costs of 100.3 Radio in the reprinting of forms, letterhead, envelopes and promotional materials, including coverage maps, to reflect the new frequency on which KIOI would begin broadcasting, West Texas and 100.3 Radio will proceed as follows:

i. First, 100.3 Radio will undertake to barter advertising time on KIOI for the printing and duplicating services. If 100.3 Radio is unable to make such barter arrangements for two thousand five hundred dollars worth of printing and duplicating services by the date on which West Texas gives the notice required by paragraph 5 of this section of this Agreement, the obligations of West Texas specified in the next two subparagraphs shall become effective.

ii. West Texas will attempt to arrange for the provision of bartered printing and duplicating services for the benefit of 100.3 Radio in the amount of two thousand five hundred dollars worth of printing and duplicating value by offering as barter exchange advertising time on its station KMMX. To the extent that 100.3 Radio has made barter arrangements for printing and duplicating services pursuant to subparagraph i., the value of such barter arrangements shall reduce the obligation of West Texas under this subparagraph ii.

iii. If the efforts of 100.3 Radio and West Texas pursuant to subparagraphs i. and ii. respectively have not provided 100.3 Radio with bartered printing and duplicating services in the value of two thousand five hundred dollars by the fourteenth day after the giving of notice by West Texas called for by paragraph 5 of this section of this Agreement, then West Texas shall immediately pay to 100.3 Radio in cash the difference between two thousand five hundred dollars and the value of the bartered printing and duplicating services arranged pursuant to subparagraphs i and ii.

8. Payment to 100.3 Radio. In addition to the obligations it has undertaken in the preceding paragraphs of this Agreement, West Texas hereby agrees to pay 100.3 Radio the sum of Ten Thousand Dollars as follows:

a. Within nine (9) days after execution of this Agreement, West Texas will deliver Ten Thousand Dollars (\$10,000.00) to its attorney, Lawrence J. Bernard, Jr. with directions to deposit said sum in an interest-bearing escrow account. The terms and conditions of the escrow deposit, to be agreed upon by West Texas' attorney and James P. Riley, attorney for 100.3 Radio, will include deposit of the funds in a Washington, D.C. area banking institution fully insured by an agency of the United States Government.

b. Upon completion of the transactions described in paragraph 5 of this section, West Texas will take such actions

as are necessary to pay the \$10,000.00 principal of the above-referenced escrow account to 100.3 Radio and pay any interest earned on the account to West Texas.

9. Payment by Southwestern to West Texas. Southwestern acknowledges that it will benefit from the transactions between West Texas and 100.3 Radio described in paragraphs 1 through 5 of this section, in that completion of said transactions will enable it to obtain authority from the FCC to construct new facilities for KLCU on Channel 284C2. Accordingly, as consideration for receipt of this benefit, Southwestern hereby agrees to execute and deliver to West Texas on or before the date described in paragraph 5 of this section its promissory note in the amount of Five Thousand Dollars (\$5,000.00), guaranteed by its President, Thomas J. Crane, in the form attached hereto as Exhibit A.

10. Contingency; Right to Prosecute. As of January 21, 1994, 100.3 Radio shall no longer be bound by the terms of this Agreement unless the FCC has, prior to that date, issued a Special Temporary Authorization permitting the continued operation of KIOL on Channel 262C1 at the KIOL Current Site. Anything contained in this Agreement notwithstanding, 100.3 Radio reserves the right to prosecute the application for a minor modification of its Channel 262C1 facilities filed December 14, 1987 (BPH-871214ID). This application was dismissed by the FCC Letter Order. 100.3 Radio hereby specifically reserves the right to seek reconsideration of the Letter Order. If the FCC actions necessary to confer upon 100.3 Radio Inc. full and final authority to operate station KIOL

on Channel 284C1 from the KIOU Current Site are granted, 100.3 Radio Inc. will request dismissal of BPH-871214ID.

11. Law of Contract; Prior Negotiations; Entire Agreement.

This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. It contains all of the terms agreed upon by the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally. No attempted change, termination or waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against which it is sought to be enforced.

12. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when the parties shall have each executed one counterpart.

13. Notices: Any notice to be given under this Agreement shall be considered as given when mailed by U.S. postage-prepaid first-class Mail with return receipt requested as follows:

If to 100.3 Radio:

Mr. Galen O. Gilbert
CSRG, Inc.
212 West Oak Circle
Sulphur Springs, Texas 75482

with a copy to:

James P. Riley, Esquire
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, Virginia 22209

If to West Texas Broadcasting Co., Inc.
Mr. J. Morgan Dowdy

with a copy to:

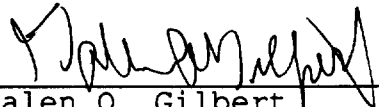
Lawrence J. Bernard, Jr., Esquire
Law Offices of Lawrence J. Bernard, Jr.
2000 L Street, N.W.
Suite 504
Washington, D.C. 20036

If to Southwestern Broadcasting Corporation:
Mr. Thomas J. Crane


with a copy to:

In consideration of their mutual promises, the parties hereto have entered into this Agreement as of the date indicated above.


100.3 RADIO, INC.

By: 
Galen O. Gilbert
President

WEST TEXAS BROADCASTING CO., INC.

By: 
J. Morgan Dowdy
President

SOUTHWESTERN BROADCASTING CORPORATION

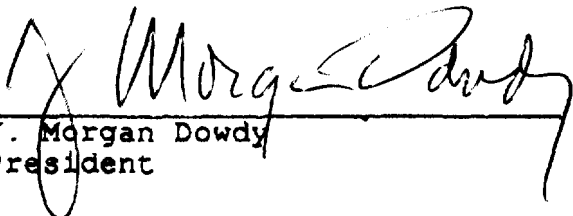
By: 
Thomas J. Crane
President

In consideration of their mutual promises, the parties hereto have entered into this Agreement as of the date indicated above.

100.3 RADIO, INC.

By: _____
Galen O. Gilbert
President

WEST TEXAS BROADCASTING CO., INC.

By:  _____
J. Morgan Dowdy
President

SOUTHWESTERN BROADCASTING CORPORATION

By: _____
Thomas J. Crane
President

In consideration of their mutual promises, the parties hereto have entered into this Agreement as of the date indicated above.

100.3 RADIO, INC.

By: _____
Galen O. Gilbert
President

WEST TEXAS BROADCASTING CO., INC.

By: _____
J. Morgan Dowdy
President

SOUTHWESTERN BROADCASTING CORPORATION

By:  _____
Thomas J. Crane
President

EXHIBIT B

Doudy (B)

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAR 25 1988

IN REPLY REFER TO:

8920-MW

Barry W. Sheridan, Esq.
Smith, Carter, Rose, Finley & Hofman
P.O. Box 2540
San Angelo, TX 76902-2540

Lawrence J. Bernard, Jr.
Ward & Mendelsohn
1100 Seventeenth Street, N.W.
Suite 900
Washington, D.C. 20036

In re: **KLSC(FM)**, La Mesa, Texas
West Texas Broadcasting Co., Inc. ("WTB")
BAPH-871214GI
BPH-871214IE

KUFO(FM), La Mesa, Texas
Giraffe Communications, Inc., debtor in
possession ("Giraffe")
BALH-871214GH
BPH-871214ID

Gentlemen:

This letter is in reference to: (i) the applications of WTB to assign the construction permit¹ of station KLSC(FM), La Mesa, Texas to Giraffe, and to change the station's operating frequency from Channel 268CI to 284CI; (ii) the application of Giraffe to assign the license of KUFO(FM) of WTB² and to change the station's operating frequency from channel 284CI to 262CI; and (iii) the objection to KLSC's proposals, filed on behalf of Mr. Galen Gilbert, a creditor of Giraffe, on December 14, 1987.

1 A license to cover the construction permit has been filed.
BLH-870909KA

2 On February 17, 1988, the Commission granted a "short form" application for assignment of licenses of KUFO(FM) and KBYG, La Mesa, Texas from Giraffe Communications, Inc. to Giraffe Communications, Inc. debtor-in-possession. These applications (BAL-880128EG, BALH-880127EH) were filed pursuant to a court order issued in response to Giraffe's voluntary petition for Bankruptcy. See Order in Case No. 687-60167, dated October 2, 1987 (U.S. Bankruptcy Court-N.D. Texas).

In order to improve coverage by eliminating interference within KLSC's desired service area, WTB and Giraffe wish to switch frequencies; KLSC(FM) would then operate on channel 284C1 rather than its currently authorized 262C1, and KUFO(FM) would switch from Channel 284C1 to 262C1. On September 9, 1987, the parties filed a "Joint Request for Order Modifying License to Specify New Operating Facilities" to accomplish these goals. This request was denied by the Chief, Audio Services Division, on November 20, 1987, primarily because such an order was deemed inappropriate for accomplishing the desired goal. During an informal meeting with the Commission's staff, it was agreed that the parties' best recourse would be to file jointly for assignment of licenses and for modification of licenses to specify operation on the desired frequency. This was done on December 14, 1987. In the cover letter accompanying the December 14 filing, the parties requested that the Commission grant KLSC(FM) and KUFO(FM) special temporary authority to operate with the facilities specified in the modification applications, pending final approval of those applications.

On December 14, 1987, Mr. Gilbert's objection to the KLSC(FM)'s proposal was filed. In this pleading, Mr. Gilbert pointed out that Giraffe had petitioned for bankruptcy and that he was one of Giraffe's creditors. Mr. Gilbert then contends that he agreed to Giraffe's proposal to switch frequencies if Giraffe's outstanding debt to him was reduced by \$25,000. Because "it appears that [Giraffe] will not make this payment," Gilbert rescinded his permission and stated his desire for KLSC'S frequency to remain at Channel 262C1 (104.7MHz).

Gilbert's complaint appears to be founded in a contractual dispute, directed at private interest rather than public interest considerations. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that the parties, if they deem it advisable, should seek redress in a local court of competent jurisdiction. See, e.g., John F. Runner, Receiver, 26 RR 2d 777, 778 (1976). The Commission has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements between parties. Transcontinent Television Corp., 21 RR 945 (1961). "Thus, as a matter of long-standing policy, the Commission does not assume jurisdiction in contractual or debtor-creditor controversies involving broadcast licenses, recognizing that such matters are generally private in nature and appropriately left to the local courts for resolution." Letter to Roy J. Harris, May 14, 1976. While Mr. Gilbert has argued (and indeed the licensee has admitted) the existence of bankruptcy proceedings involving Giraffe, he has not shown how a grant of the present requests forecloses remedies available through local or bankruptcy court or that the matter requires deferral of a decision on the application or its designation for hearing. Absent some word of direction from the